

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DEWEY, et al., :
Plaintiffs, : Civil Case No. 07-2249 (FSH)
v. : **ORDER**
VOLKSWAGEN AG, et al., : Date: March 31, 2008
Defendants. :
:

DELGUERCIO, et al., :
Plaintiffs, : Civil Case No. 07-2361 (FSH)
v. :
VOLKSWAGEN OF AMERICA, et al., :
Defendants. :
:

HOCHBERG, District Judge

This matter comes before the Court upon Defendant Volkswagen of America's ("VWoA") Motion to Dismiss the Dewey Plaintiffs' Complaint and Plaintiff Delguercio's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) (Dewey DKT#24; Delguercio DKT#16), and Defendants' Motions to Quash Purported Service of Process on Volkswagen AG, Audi AG, and Volkswagen De Mexico, S.A. de C.V. in both cases (Dewey DKT#29;

Delguercio DKT#18). The Court has considered the arguments of the parties on the papers pursuant to Federal Rule of Civil Procedure 78; and

IT IS on this 31st day of March, 2008

ORDERED that Defendants' Motions to Quash Purported Service of Process on Volkswagen AG, Audi AG, and Volkswagen De Mexico, S.A. de C.V. (Dewey DKT#29; Delguercio DKT#18) are **GRANTED** as to Volkswagen DeMexico, S.A de C.V. (VWDM) and Audi AG (AAG), and **DENIED** as to Volkswagen AG; and it is further

ORDERED that if Plaintiffs intend to attempt service upon VWDM and AAG, Plaintiffs shall proceed in accordance with the Hague Convention and shall initiate that process within **fourteen (14) calendar days** of the date of this Opinion; and it is further

ORDERED that Defendants' motion to dismiss is **GRANTED** in part and **DENIED** in part; and it is further

ORDERED that Defendants' motion to dismiss Plaintiffs' express limited warranty claims is **GRANTED** as to all Plaintiffs with leave to Plaintiff Romeo to replead within **ten (10) calendar days** of this opinion if an alternative ground for tolling exists; and it is further

ORDERED that Defendants' motion to dismiss Plaintiffs' powertrain warranty claims is **GRANTED** as to Plaintiffs Dewey, DeMartino, and Romeo and **DENIED** as to Plaintiff Delguercio on the limited question set forth in the opinion; and it is further

ORDERED that Defendants' motion to dismiss Plaintiffs' implied warranty claims is **DENIED** without prejudice to renew the argument in a subsequent motion for summary judgment; and it is further

ORDERED that Defendants' motion to dismiss Plaintiff Delguercio's Consumer Fraud Act claim is **DENIED** without prejudice and with leave to renew the argument at the summary judgment stage; and it is further

ORDERED that Defendants' motion to dismiss Plaintiff Delguercio's common law fraud claim is **DENIED**; and it is further

ORDERED that Defendants' motion to dismiss Dewey, DeMartino, and Romeo's Consumer Fraud Act claim under Rule 9(b) is **GRANTED** without prejudice and with leave to Plaintiffs to amend their complaint within **ten (10) calendar days** of this opinion as to the allegedly fraudulent statements "contained in the 'Owners Literature,' maintenance books, and other marketing materials", Dewey Compl. ¶ 19; and **DENIED** as to the allegations contained in paragraph 64 of the Dewey Complaint, with leave to renew the argument as to non-New Jersey Plaintiffs Dewey and Romeo at the summary judgment stage; and it is further

ORDERED that Defendants' motion to dismiss Dewey, DeMartino, and Romeo's common law fraud claim under Rule 9(b) is **GRANTED** without prejudice and with leave to Plaintiffs to amend their complaint within **ten (10) calendar days** of this opinion as to the allegedly fraudulent statements "contained in the 'Owners Literature,' maintenance books, and other marketing materials", Dewey Compl. ¶ 19; and **DENIED** as to the allegations contained in paragraph 64 of the Dewey Complaint; and it is further

ORDERED that Defendants' motion to dismiss Plaintiffs' unjust enrichment claims is **DENIED** as to all Plaintiffs; and it is further

ORDERED that Defendants' motion to dismiss Plaintiffs' negligent representation claims is **DENIED** as to all Plaintiffs; and it is further

ORDERED that Defendants' motion to dismiss Plaintiffs' breach of duty of good faith and fair dealing claims is **DENIED** as to all Plaintiffs; and it is further
ORDERED that Defendants' motion to dismiss Plaintiff Delguercio's claim for improper repair is **GRANTED**.

/s/ Faith S. Hochberg
HON. FAITH S. HOCHBERG, U.S.D.J.